Supreme Court, U.S.
FILED
MAR 8 1996
CLERK

No. 95-1258

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

JEREMIAH W. (JAY) NIXON, Attorney General of Missouri,
and JOHN MAUPIN, Chairman, Missouri Ethics Commission, *Petitioners*,
v.
THOMAS D. CARVER, *Respondent*.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

BRIEF IN OPPOSITION

THOMAS PATRICK DEATON, JR.
333 Park Central East #612
Springfield, Missouri 65806
(417) 865-4600
Counsel for Respondent

QUESTION PRESENTED

In the November 1994 general election, Missouri voters approved an initiative, Proposition A, which set new campaign contribution limits for state and local candidates. These limits ranged from $300 per election cycle for statewide offices to $100 per election cycle for state representative seats and local offices in districts with populations less than 100,000. These limits replaced a higher set of limits passed by the state legislature earlier in 1994 as Senate Bill 650. Thomas Carver, a citizen of Missouri, challenged the constitutionality of the limits enacted by voter initiative in a 42 U.S.C. § 1983 civil rights suit.

The question presented by this suit is:

Whether the First Amendment freedoms of speech and association prohibit a State from enacting campaign contribution limits ranging from $100 to $300 per election cycle for state and local candidates that are dramatically lower than the $1000 per election limit approved by this Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), for presidential and congressional candidates without the State demonstrating that it has narrowly tailored these lower limits to meet a compelling interest.

TABLE OF CONTENTS

Page

QUESTION PRESENTED I

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

CONSTITUTIONAL AND STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 4

REASONS WHY THE PETITION SHOULD BE DENIED 6

I. This Court has an inadequate record below to issue an advisory opinion as requested by the State on the constitutionality of campaign contribution limits that were dramatically lower than the $1000 per election limit approved in *Buckley v. Valeo*, 424 U.S. 1 (1976), because the State failed to present evidence that the $100-$300 per election cycle contribution limits in Proposition A were narrowly tailored to meet any compelling interest. 6

II. Missouri's campaign contribution limits in Proposition A were the lowest in the United States and not typical of the limits in effect elsewhere. 10

III. There are no uncertainties and conflicts on the constitutionality of Proposition A's contribution limits that this Court could resolve by granting the petition for certiorari. 12

IV. The Eighth Circuit's decision will not be an obstacle to campaign finance reform efforts. 15

CONCLUSION 17

TABLE OF AUTHORITIES

Cases: Page

Buckley v. Valeo, 424 U.S. 1 (1976) ..... passim

Citizens Against Rent Control v. Berkeley,
454 U.S. 290 (1981) 14, 16

Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994),
cert. denied, 513 U.S. __, 115 S.Ct. 936 (1995) 11

McIntyre v. Ohio Elections Commission,
115 S.Ct. 1511 (1995) 6

Nat. Black Police Ass'n v. District of Columbia,
858 F. Supp. 251 (D.D.C. 1994) 7, 8

Turner Broadcasting System, Inc. v. FCC,
512 U.S. __, 114 S.Ct. 2445 (1994) 9

United States v. National Treasury Employees Union,
513 U.S. __, 115 S.Ct. 1003 (1995) 9

Statutes:

Mo. Rev. Stat. Chapter 130 (1994) 4, 10, 12

Mo. Rev. Stat. § 130.011(16) (1994) 10

Mo. Rev. Stat. § 130.026 (1994) 13

Mo. Rev. Stat. § 130.032.1 (1994) 3, 4, 7, 8

Mo. Rev. Stat. § 130.032.7 (1994) 4

Mo. Rev. Stat. § 130.041 (1994) 4

Mo. Rev. Stat. § 130.046.1 (1994) 13

Mo. Rev. Stat. § 130.046.3 (1994) 13

Mo. Rev. Stat. § 130.100 (Supp. 1995) 2, 3, 10-12, 14

Constitutions:

U.S. Const. Art. V, cl.3 16

U.S. Const., amend. I ..... passim

Mo. Const. Art. III, § 15 16

Mo. Const. Art. IV, § 17 11

Other Authorities:

Missouri Attorney General Opinion Letter No. 218-94
(December 6, 1994) 4, 5

No. 95-1258

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

JEREMIAH W. (JAY) NIXON, Attorney General of Missouri,
and JOHN MAUPIN, Chairman, Missouri Ethics Commission, *Petitioners,*
v.
THOMAS D. CARVER, *Respondent.*

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

BRIEF IN OPPOSITION

The respondent, Thomas Carver, respectfully requests that this Court deny the petition for writ of certiorari which seeks review of the Eighth Circuit's opinion in this case. That opinion is reported at 72 F.3d 633 (8th Cir. 1995). (Petitioner's Appendix [hereinafter Pet. App.] at A-1 to A-20.) The opinion of the district court is reported at 882 F. Supp. 901 (W.D. Mo. 1995). (Pet. App. at A-30 to A-42.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Mo. Rev. Stat. § 130.100 (Supp. 1995) (part of "Proposition A"):

Contribution limits: There shall be the following limitations on campaign contributions:
(1) No person or committee shall make a contribution to any one candidate or candidate committee with an aggregate value in excess of:

(a) $100 per election cycle per candidate in districts with fewer than 100,000 residents;

(2) [b] $200 per election cycle per candidate, other than statewide candidates, in districts of 100,000 or more residents. For purposes of this section "statewide candidates" refers to those candidates seeking election to the office of Governor, Lieutenant Governor, Attorney General, Auditor, Treasurer and Secretary of State.

(3) [c] $300 per election cycle per statewide candidate.

(2) No person, entity or committee shall make a contribution to any other persons, entities or committees for the purpose of contributing to a specific candidate which when added together or when added together with contributions made directly to the candidate or to the candidate's committee, will have an

aggregate value in excess of the limits stated in section 1*.
(3) No candidate or candidate committee shall solicit or accept any contribution with an aggregate value in excess of the limits stated in this section.
(4) For purposes of this section, the term "candidate" shall include the candidate, the candidate's treasurer, and the candidate's committee and any contribution to the candidate's treasurer or candidate committee shall be deemed a contribution to the candidate.
(L. 1994 Adopted by Initiative, Proposition A, November 8, 1994)

*Probably refers to subdivision (1) of this section.

Mo. Rev. Stat. § 130.032.1 (1994) ("Senate Bill 650"):

1. In addition to the limitations imposed pursuant to sections 130.031 and 130.052, the amount of contributions made by or accepted from any person in any one election shall not exceed the following:

(1) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor or attorney general, one thousand dollars;

(2) To elect an individual to the office of state senator, five hundred dollars;

(3) To elect an individual to the office of state representative, two hundred fifty dollars;

(4) To elect an individual to any other office, if the population of the electoral district, ward, or other unit according to the latest decennial census is under one hundred thousand, two hundred fifty dollars;

(5) To elect an individual to any other office, if the population of the electoral district, ward, or other unit

according to the latest decennial census is at least one hundred thousand but less than two hundred fifty thousand, five hundred dollars; and

(6) To elect an individual to any other office, if the population of the electoral district, ward, or other unit according to the latest decennial census is at least two hundred fifty thousand, one thousand dollars.

STATEMENT OF THE CASE

Plaintiff Carver incorporates by reference the statement of facts in the opinion of the Eighth Circuit. (Pet. App. at A-2 to A-6.) Carver corrects Petitioner's Statement, (Petition for Writ of Certiorari [hereinafter Pet.] at 3-6), pursuant to the requirements of Supreme Court Rule 15.2.

A correct background statement would be that prior to 1994 there were no limits on campaign contributions to state and local candidates in Missouri. *See* Mo. Rev. Stat. Chapter 130 (1994). Candidates only had to file periodic campaign finance reports. Mo. Rev. Stat. § 130.041. The Missouri legislature passed contribution limits as part of Senate Bill 650 during its session that ended in May 1994. Mo. Rev. Stat. § 130.032 (1994). These limits were to go into effect on January 1, 1995. Mo. Rev. Stat. § 130.032.7. Voters, however, enacted dramatically lower contribution limits through the initiative process that concluded on election day, November 8, 1994. *See* Missouri Attorney General Opinion Letter No. 218-94 at 3 (December 6, 1994). The contribution limits of Proposition A (codified as Mo. Rev. Stat. § 130.100 (Supp. 1995)) went into effect immediately and superseded Senate Bill 650's limits (codified as Mo. Rev. Stat. § 130.032.1 (1994)) according to

the opinion of Attorney General Nixon. Missouri Attorney General Opinion Letter No. 218-94 at 5 (December 6, 1994).

In their Petition, defendants Nixon and Maupin ("the State") attributed the large vote for the initiative called "Proposition A" with its campaign contribution limits to "increasing public disillusionment" and "a new wave of reform efforts." (Pet. at 4.) The Petition did not cite to the record for these propositions.

There was nothing in the record to support the State's view of history. There was no polling data, surveys, or any other reliable data to support these statements. The Eighth Circuit commented on the lack of evidence about the purpose of the Proposition A campaign contribution limits, or the reasons why people voted for them. (Pet. App. at A-28.)

Petitioners' Statement does not give any background about Tom Carver. Carver is a resident of Springfield, Missouri, who has taken the responsibilities of citizenship seriously. (Trial Transcript [hereinafter Tr.] at 6, 8.) He was on the steering committee for Missourians for Honest Elections who worked for campaign finance reform in Missouri after Watergate in the 1970's. (Tr. at 8.) He served two two-year terms in the Missouri House of Representatives. (Tr. at 7-8.) He has contributed to political candidates. (Tr. at 4.) He has advised and managed campaigns. (Tr. at 27.) He and his wife have hosted fundraisers for candidates in their home. (Tr. at 5.) He has contributed to candidates for the purposes of "nurtur[ing] the political process," "help[ing] people participate in that process," "further[ing] my own opinions about good government," and "counterbalanc[ing] to a lot of institutional funding." (Tr. at 6.)

REASONS WHY THE PETITION SHOULD BE DENIED

I. This Court has an inadequate record below to issue an advisory opinion as requested by the State on the constitutionality of campaign contribution limits that were dramatically lower than the $1000 per election limit approved in *Buckley v. Valeo*, 424 U.S. 1 (1976), because the State failed to present evidence that the $100-$300 per election cycle contribution limits in Proposition A were narrowly tailored to meet any compelling interest.

It is hard to analyze a remedy without knowing what the problem is. Nevertheless, the State has petitioned this Court to consider the constitutionality of campaign contribution limits without the State making any

> "showing as to why it was necessary to adopt the lowest contribution limits in the nation and restrict First Amendment rights of so many contributors in order to prevent corruption of the appearance of corruption associated with large campaign contributions."

(Pet. App. at A-26.) The State also failed to present "any evidence of a harm or disease that needed to be addressed between the limits of Senate Bill 650 and those enacted in Proposition A." (Pet. App. at A-24.) The State, therefore, failed to meet its burden to show that the Proposition A contribution limits were narrowly tailored to meet a compelling interest. *McIntyre v. Ohio Elections Commission,* 115 S.Ct. 1511, 1519 (1995). Without this evidence, this Court cannot analyze whether these low contribution limits were narrowly tailored to the perceived problem the State wants this Court to address.

The State has petitioned this Court to issue an advisory opinion on the constitutionality of limits in the $100 to $300 per election cycle range on contributions to candidates for state and local offices in Missouri. The Eighth Circuit reviewed the contribution limits in light of the State's compelling interest in "limiting the reality or perception of undue influence and corruption from large contributions." (Pet. App. at A-15.) The Eighth Circuit correctly reasoned that the contribution limits in Senate Bill 650 solved any problems caused by large campaign contributions. (Pet. App. at A-24.)

Senate Bill 650's limits range from $1000 per election for statewide candidates to $250 per election for the office of state representative or for offices in a district with a population under 100,000. Mo. Rev. Stat. § 130.032.1. These limits include $500 on contributions to candidates for the state senate and for offices in districts with a population of more than 100,000 but less than 250,000. *Id.*

It was reasonable to expect the State to produce evidence of whatever problems would have arisen from contributions above the Proposition A limits. The State could have presented testimony, if any existed, from the Missouri Ethics Commission about problems of corruption arising from contributions. The State's expert witnesses on campaign finance laws were unable to provide the district court with any examples of corruption in Missouri or other states arising from contributions under $1000. (Tr. at 82-85.)

Consequently, the decision of the Eighth Circuit will not foreclose courts from litigating the constitutionality of contribution limits that are lower than the $1000 per election limit approved for individuals in *Buckley*. The State's petition cited a District of Columbia case, *National Black Police Ass'n*

v. District of Columbia Board of Elections and Ethics, 858 F. Supp. 257 (D.C.C. 1994) (order denying plaintiff's motion for preliminary injunction). (Pet. at 9, n.22.) The court heard closing arguments in that case on February 29, 1996. *National Black Police Ass'n v. District of Columbia Board of Elections and Ethics*, No. 94-1476 (telephone call to Ross, Dixon & Masback at 202-662-2017). If *Carver v. Nixon* had foreclosed the First Amendment issues, there would not have been a trial.

Although the State predicts that litigation on individual campaign contribution limits may start in other jurisdictions, (Pet. at 15-16), there has been a noticeable lack of litigation on individual contribution limits since *Buckley*. For example, there are no appellate decisions on challenges to the limits for federal candidates as predicted by the State's petition even though inflation has effectively lowered the $1000 per election limit since Congress set that limit in 1974. Neither Carver nor any other resident of Missouri has challenged the limits enacted by the Missouri legislature in Senate Bill 650 as Mo. Rev. Stat. § 130.032.1.

The future harm that the State predicts in support of its petition, (Pet. at 9), will not occur. Missourians cannot "hand over large amounts of money to candidates themselves," (Pet. at 9), because Missouri has the contribution limits of Senate Bill 650 in effect upon the demise of Proposition A. This case was not a choice between no contribution limits (Missouri prior to November 8, 1994) and the extremely low limits of Proposition A because the reasonable limits in Mo. Rev. Stat. § 130.032.1 have been in effect since January 1, 1995, except for the time between the judgment of the district court on April 18, 1995, (Pet. App. at A-42), and the mandate from the Eighth Circuit issued on January 25, 1996.

There is also no record in support of the State's argument that the Proposition A initiative for contribution limits "was part of a widespread, grassroots fight" for what voters considered to be a "critical need." (Pet. at 10.) The Eighth Circuit correctly noted that the district court record did not present any evidence about the need for the limits or the purposes and intentions to the voters who supported Proposition A. (Pet. App. at A-26, A-28.) The proponents and voters for Proposition A may have supported the initiative to sabotage Missouri's system of private campaign financing and force the legislature to approve public financing for state and local offices.

The State cannot fulfill its burden by conjecturing about problems in the election process and offering a vague hypothesis that its regulations will promote the public good. (*Amicus curiae* American Civil Liberties Union Brief in Support of Appellant at 7.) The State "must demonstrate that the recited harms are real ... and that the regulation will in fact alleviate these harms in a direct and material way." *United States v. National Treasury Employees Union,* 513 U.S. __, 115 S.Ct. 1003, 1017 (1995) (quoting *Turner Broadcasting System, Inc. v. FCC,* 512 U.S. __, __, 114 S.Ct. 2445, 2470 (1994)).

The lack of litigation over the past twenty years since *Buckley* shows that there is no need for guidance from this Court on the constitutionality of campaign contributions by individuals to candidates. If that need ever arises, it will arise out of a trial court record that demonstrates a compelling need for contribution limits below what *Buckley* upheld for federal candidates. With that kind of record, this Court would be able to determine whether the remedy of low contribution limits was narrowly tailored to meet whatever purported compelling need exists.

In the meantime, nothing in the Eighth Circuit's decision will prevent officeholders and candidates from debating campaign finance issues. Candidates can voluntarily abide by the contribution limits in Proposition A.

II. Missouri's campaign contribution limits in Proposition A were the lowest in the United States and not typical of the limits in effect elsewhere.

The Eighth Circuit's decision noted that the campaign contribution limits in Proposition A were lower than the limits in any other state and "dramatically lower" than the limits approved in *Buckley*. (Pet. App. at A-21 to A-22.) This Court should deny the Petition for Writ of Certiorari because the extremely low limits are not typical of the limits that the State predicts will become a constitutional issue elsewhere. It is unlikely that this Court would reach the issue on which the petition seeks an advisory opinion.

The numbers for contribution limits in the State's Petition do not tell the whole story. The rest of the story depends, in part, on the time period for the contribution. The Eighth Circuit carefully analyzed the different contribution limits among the states. (Pet. App. at A-20 to A-21.) The court carefully distinguished "per election cycle" limits from "per election" limits. (Pet. App. at A-20.)

Proposition A's contribution limits were "per election cycle." Mo. Rev. Stat. § 130.100 (Supp. 1995). Missouri's Campaign Finance Disclosure Law, Chapter 130, defines "election cycle" as "the period of time from general election for an office until the next general election for the same office. Mo. Rev. Stat. § 130.011(16) (1994).

The *Buckley* limits were per election. 424 U.S. at 23. Therefore the maximum contribution for a federal candidate was a total of $2000 but no more than $1000 in each primary or general election (assuming no run off election). 424 U.S. at 24. Proposition A limited the maximum contribution to a statewide candidate to a total of $300 for the primary and general elections. Mo Rev. Stat. § 130.100(1)(c). The relevant comparison is between Proposition A's $300 limit and *Buckley*'s $2000 limit.

Another way to structure contribution limits is to limit the contributions annually as Minnesota did in *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994). The contribution limit at issue in *Day* was $100 per year on contributions to political committees or funds other than candidate committees. *Id.* at 1365. If considered annually, the maximum Proposition A contribution would be $75 per year because statewide candidates in Missouri serve four-year terms. *See* Mo. Const. Art. IV, § 17.

The numbers comparing contribution limits in different states and cities also do not tell us whether the areas provide public financing. Jon Hutchens, a polling and media consultant who was an expert witness for Carver, testified that some states with contribution limits provided public financing. (Tr. at 88.)

The State predicts constitutional challenges to contribution limits in "31 states and many more cities." (Pet. at 15-16.) The State's Petition implies that someone will challenge the Federal Election Campaign Act's $1000 limit at issue in *Buckley* because inflation has eroded its value. (Pet. at 15.) The rate of inflation was much greater in the late 1970's. Where are those suits?

Buckley has given states and cities all the guidance they

need to set constitutional limits. After reviewing the trial record, the Eighth Circuit could not find any evidence that the extremely low limits in Proposition A were necessary. (Pet. App. at A-22.) The lack of challenges to contribution limits like those in Senate Bill 650 show that the limits in Proposition A (Section 130.100) were not typical. This Court should deny the State's petition for certiorari because conflicts may never arise between the circuits over the constitutionality of candidate contribution limits.

III. There are no uncertainties and conflicts on the constitutionality of Proposition A's contribution limits that this Court could resolve by granting the petition for certiorari.

The lack of court challenges to candidate contribution limits since *Buckley* shows that there are no uncertainty and conflict over the constitutionality of contribution limits. The State has implied in part III.A. of its petition that the Eighth Circuit's decision will undermine citizens' confidence in elections. (Pet. at A-16.) The Eighth Circuit's decision has, in fact, promoted the integrity of the political process by preserving the benefits of campaign finance reporting laws in effect in Missouri since 1978. *See* Rev. Stat. Mo. Chapter 130 (Campaign Finance Disclosure Law).

If the Proposition A limits had been upheld, there would have been a rush to form so-called independent campaign committees for the purposes of raising and expending money during the 1996 elections. The State's expert witness, Robert Stern, testified that low contribution limits cause an increase in independent expenditures. (Tr. at 150.) Expenditures by independent campaign committees present a problem because

independent committees only file quarterly reports. Mo. Rev. Stat. § 130.046.3. Candidates report their contributions and expenditures before and after elections. Mo. Rev. Stat. § 130.046.1.

A citizen, candidate, or reporter who wants to know who is contributing and spending money in an election would have to review the reports of all the committees at the office of the county clerk, board of election commissioners, or the Missouri Ethics Commission. *See* Mo. Rev. Stat. § 130.026. The independent committees have names such as the Citizens for Open and Honest Government. (Tr. at 105.)

These names cause the oversight problem of soft money. Because soft money is not reported as contributions to or expenditures by a candidate, it is difficult to track. Missouri's laws on campaign finance reporting will work as designed to give citizens the information about contribution and expenditures if the contribution limits are reasonable so there is less incentive to form independent committees.

The State's argument in III.B. of its petition, (Pet. at 17), demonstrates the problem caused by independent committees. The State argues that the contribution limits do not restrict Carver's freedom of speech because he is free to make independent expenditures in support of candidates. (Pet. at 19.) The State cannot have it both ways. If the contribution limits merely rechannel Carver's money in other directions, the limits do not serve any compelling interest associated with too much money in campaigns. The State's argument shows there was no compelling need for restricting Carver's freedom of speech in the first place.

The State argues that Carver is able to speak through the

media and other means to communicate his support for a candidate. (Pet. at 19.) Speaking through the media costs money. (Tr. at 34, 91.) Carver is not millionaire publisher Steve Forbes. Speaking through the media involves sophisticated production of radio and television spots before a station will accept an advertisement. The State has violated Carver's freedom of political association by preventing him from associating with other contributors to raise sufficient funds for a candidate to purchase television time.

Carver's expert witnesses, two veteran campaign professionals, discussed the importance of television for candidates because it is the cheapest (per voter contact) and most effective way to communicate with voters. (Tr. at 82-88.) One expert, Joe Cowart, discussed the problems with campaigns that relied on billboards, (Tr. at 33), candidate handshaking, (Tr. at 45), volunteers, (Tr. at 33-36), bumper stickers, (Tr. at 39), yard signs, (Tr. at 38), volunteer phone banks, (Tr. at 37-38), direct mail, (Tr. at 39-42), emery boards, (Tr. at 38), and literature drops, (Tr. at 42), instead of polling and television. Not even the Fuller Brush salesperson goes door-to-door anymore.

A citizen's First Amendment freedoms include making contributions to candidates. *Buckley,* 424 U.S. 1, 14-29; *accord Citizens Against Rent Control v. Berkeley,* 454 U.S. 290, 298 (1981). Because the media makes candidates buy advertizing time, money is an integral part of political speech. The contribution limits, therefore, limit core First Amendment activities, political expression and association, which are essential for a meaningful campaign.

The contribution limits, Section 130.100 in Proposition A, are not content neutral because they only limit contributions to

political candidates. The State, however, argues for minimal constitutional scrutiny as if these contribution limits were merely "economic regulation." (Pet. at 22.) There is nothing in the record of the district court to establish a compelling interest sufficient to support such a radical departure from *Buckley* and other First Amendment decisions.

In part III.C. of its petition, the State wants this Court to consider whether a lower level of scrutiny is appropriate for limits on campaign contributions by individuals. (Pet. at 22.) Here again, the State is seeking an advisory opinion on the appropriate remedy without presenting evidence of a problem. This Court could not apply the rational relationship test to the Proposition A contribution limits as suggested by the State because, as the Eighth Circuit noted, the district court record contains no evidence of the purpose for the limits. (Pet. App. at A-28.)

In its petition for writ of certiorari, the State could not provide this Court with any conflicts of decisions over the constitutionality of campaign contribution limits to candidates. (Pet. at 22-25.) The lack of conflicts shows there is no need to grant the State's petition for certiorari.

IV. The Eighth Circuit's decision will not be an obstacle to campaign finance reform efforts.

The Eighth Circuit's decision does not prevent state and local governments from enacting appropriate contribution limits to remedy problems of corruption caused by campaign contributions. The Eighth Circuit's decision did not establish a new rule of law by holding that the Proposition A contribution limits violated the First Amendment. The decision followed basic First Amendment jurisprudence by declaring the

limits unconstituional because the State failed to present any evidence of a compelling need for such low limits to prevent the potential for corruption caused by large contributions. (Pet. App. at A-26.)

The Eighth Circuit found the contribution limits unconstitutional because of the deficient record in the district court. (Pet. App. at A-27, A-29.) The decision did not decide whether these contribution limits were unconstitutional on their face values.

The Eighth Circuit's decision leaves another issue unresolved--whether a state or local government violates the First Amendment by enacting extremely low contribution limits if the government narrowly tailors those limits to meet a compelling need caused by problems with small campaign contributions to candidates. Granting certiorari will not resolve this issue because the district court record showed no evidence of any problem or harm caused by contributions below the limits already established by Mo. Rev. Stat. § 130.032.1 (Senate Bill 650).

The Eighth Circuit responsibly and thoughtfully fulfilled the role of the judicial branch in checking actions by other branches of government that violated core First Amendment freedoms of political expression and association. There was no reason for the Eighth Circuit to uphold the constitutionality of contribution limits merely because they passed with seventy-four percent of the vote in the initiative process. Legislators, unlike voters, take an oath to uphold the Constitution of the United States. *See* U.S. Const. Art. V, cl.3; Mo. Const. Art. 3, § 15. The Eighth Circuit applied the rule that "voters may no more violate the Constitution than the legislature." (Pet. App. at A-27, citing *Citizens Against Rent Control v. Berkeley,* 454

U.S. 290, 295.)

The Eighth Circuit's decision is no obstacle to other methods of campaign finance reform. Money plays a critical role in political campaigns because television, radio, and newspapers offer limited coverage of political races and charge candidates who want to advertise. If the media provided free access to candidates, the candidates would not need to devote so much of their campaign efforts to raising money. Unlike contribution limits, this reform would not present First Amendment problems.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

THOMAS PATRICK DEATON, JR.

333 Park Central East #612
Springfield, Missouri 65806
(417) 865-4600
Counsel for Respondent

March 6, 1996